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In the Supreme Court of the United States

METRO-GOLDWYN-MAYER STUDIOS INC., *ET AL.*,
Petitioner,

v.

GROKSTER, LTD., *ET AL.*
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE* SNOCAP, INC. IN SUPPORT OF NEITHER PARTY

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INTERESTS OF AMICI CURIAE

Amici curiae SNOCAP, Inc. offers technology that implements digital licensing and copyright management services through a music registry.[1] Its software application enables individual artists and record labels to make the full depth of their catalogs available through authorized peer-to-peer networks and online retailers. Created by several founders of Napster, Inc., including Shawn Fanning, SNOCAP has developed technology that allows peer-to-peer technology to become an engine of the authorized digital music marketplace by exploiting its compelling benefits to copyright holders, online services and consumers.[2] As a result of its founders' substantial experience in pioneering peer-to-peer technology, SNOCAP respectfully submits this brief to alert the Court of technological innovations that may aid the Court in resolving the issues presented.

STATEMENT OF AMICUS CURIAE

The struggle to balance the interests of copyright holders with society's competing interests in the free flow of ideas, information and commerce is nothing new. In *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417 (1984) (*Sony-Betamax*), this Court carefully analyzed the future potential for what was then a new technology, and established a balance between innovation and protection of copyright interests. Now presented before the Court is whether peer-to-peer technology and its promise is at odds with respecting the rights granted to copyright owners.

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[1] The parties consented to the filing of this brief, and copies of the parties' written consents have been filed with the Clerk of the Court. This brief was not authored in any part by counsel for either party and no person or entity other than amicus curiae, its members, and counsel made a monetary contribution toward the preparation or submission of this brief.

[2] SNOCAP's mission and initiatives are described at http://www.snocap.com.

Petitioners and Respondents have disagreed about the ability to block infringement occurring on Respondents' services. This brief does not address that dispute. SNOCAP wishes to call the Court's attention to a particular technological solution that makes it possible for peer-to-peer businesses to continue their commercial potential while honoring original works of musical authorship entitled to protection under copyright. This technology enables peer-to-peer networks to control the sharing of digital music files without degradation of their services or significant change to their technological architecture.

A brief explanation of the mechanics of the technology is needed to describe the solution. Digital music files currently being shared on peer-to-peer networks are largely created by users of the networks by using a computer to create a digital copy of the original recording, typically from a compact disc. These copies are predominantly created using the mp3 codec, *i.e.*, they are encoded using an mp3 format, and are not protected by any copy control or digital rights management system. When that copy is created, no identifying data is transferred from the original compact disc to the digital file, other than the file name that a user chooses to create for the copy. That file name can be changed, misspelled, or mislabeled and is generally not reliable. As a result, the reportedly billions of digital music files being shared on peer-to-peer networks are effectively not traceable or countable in any commercially reliable manner.

Order can be brought to this environment. Peer-to-peer client software applications can be modified to allow these unprotected mp3 files to be recognized through a variety of methods, including by means of an acoustic fingerprint.[3] These acoustic fingerprints are derived from known recordings of specific works, and may also be created for

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[3] An acoustic fingerprint is a mathematical rendering of the acoustical properties of a particular sound recording, typically a recording embodied in a digital file, including an mp3 file. That fingerprint can be stored in a similar manner to a digital rendering of a human fingerprint, and can be searched for matches to a digital file in a similar manner to fingerprint databases used by the law enforcement community.

other versions of the works, such as live recordings, remixes, and other derivatives. By obtaining an acoustic fingerprint of a digital music file that a user wishes to share and comparing it to the fingerprint of the original work, it is possible to obtain a match of the two in a commercially reliable manner. SNOCAP and others have developed technology to accomplish this comparison in real time.[4]

Significantly, the ability to store acoustic fingerprints of original recordings in a database registry, that also associates those fingerprints with rules for distribution set by the copyright owners, accomplishes two important objectives. For potential peer-to-peer retailers, it opens the door for developing a commercial market to provide digital music files to its users. For the copyright owner, it permits tracking of digital music files and enables commercial transactions.

The use of peer-to-peer technology in a new retail environment is potentially a significant commercial business and encourages both respect for copyrights and a commercial market in the peer-to-peer environment from which more solutions can evolve through innovation and experimentation. It very well may create an entirely new market, akin to the "enormous new market" the movie industry realized when the principal use of video recorders turned out to be people watching at home movies they bought or rented. *See In re Aimster Copyright Litigation*, 334 F.3d 643, 649-650 (7th Cir. 2003).

CONCLUSION

Technological advances exist that make it possible for peer-to-peer businesses and copyright owners to coexist, rather than stifle the future innovation that peer-to-peer technology promises. Such advances present just one way to balance the interests of copyright holders with society's competing interests in the free flow of ideas, information and commerce.

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[4] While SNOCAP's current focus is on music files, a process similar to acoustic fingerprinting may be used for electronic files containing visual and audiovisual works.

RESPECTFULLY SUBMITTED

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